

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIKESHA MARTINEZ, et al.,	No. C 09-02306 CW
Plaintiffs,	ORDER CLARIFYING
v.	INJUNCTION AND
ARNOLD SCHWARZENEGGER, et al.,	DENYING PLAINTIFFS'
Defendants.	MOTION FOR CIVIL
	CONTEMPT SANCTIONS

On June 26, 2009, the Court enjoined and restrained Defendants from implementing California Welfare and Institutions Code § 12306.1(d)(6) without first conducting the analysis required by 42 U.S.C. § 1396a(a)(30)(A), as described in Orthopaedic Hospital v. Belshe, 103 F.3d 1941, 1943 (9th Cir. 1997). Plaintiffs have now filed a motion for civil contempt sanctions, or in the alternative, for a more specific injunction. In this motion, Plaintiffs assert that State Defendants<sup>1</sup> refuse to permit counties that want to maintain their pre-§ 12306.1(d)(6) wage rates for In-Home Support Services (IHSS) to do so. Defendants argue that the injunction does not require the State immediately to reinstate the

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<sup>1</sup>State Defendants include Governor Arnold Schwarzenegger, Director of the California Department of Social Services John A. Wagner and Director of the California Department of Health Care Services David Maxwell-Jolly.

1 pre-§ 12306.1(d)(6) wage rate. Defendants assert that any county  
2 that wishes to set its rate to the pre-§ 12306.1(d)(6) level must  
3 submit a Rate Change Request, which can take up to approximately  
4 sixty days to implement. After having considered the papers filed  
5 by the parties, the Court clarifies its injunction and denies  
6 Plaintiffs' motion for contempt sanctions.

#### 7 BACKGROUND

8 On February 20, 2009, the Governor signed into law California  
9 Welfare and Institutions Code § 12306.1(d)(6). Under this law, the  
10 State's maximum contribution to wages and benefits would have been  
11 reduced from sixty-five percent of the non-federal share of an  
12 hourly rate of \$12.10 to sixty-five percent of the non-federal  
13 share of an hourly rate of \$10.10. The latter rate represents  
14 \$9.50 for wages and \$0.60 for benefits.

15 On April 2 and May 1, 2009, the California Department of  
16 Social Services (CDSS), the agency that administers the IHSS  
17 program, issued notices to counties regarding § 12306.1(d)(6).  
18 These notices "inform[ed] counties how this change will be  
19 implemented." Leyton Supp. Decl., Ex. A. The April notice stated,  
20 "Counties must submit a PA Rate Change Request to reduce the wages  
21 and health benefits to the \$10.10 state participation level no  
22 later than May 1, 2009 to be within the 60-day approval process  
23 timeline." Id. The May notice similarly stated, "Counties  
24 currently providing wages and individual health benefits above  
25 \$10.10 must submit a PA Rate Change Request to reflect the change  
26 in the maximum amount in which the state will participate." Id.,  
27 Ex. B. The May notice also extended the May 1, 2009 deadline to  
28 June 1, 2009. Through these notices, State Defendants told

1 counties that, as of July 1, § 12306.1(d)(6) required counties to  
2 submit new Rate Change Requests because CDSS's prior approvals of  
3 rates above \$10.10 would no longer be valid for reimbursement by  
4 the State. If a county did not reduce wages and benefits to \$10.10  
5 or below, it would have to make up the difference between the  
6 State's current contribution and the county's rate.

7       Upon receipt of these notices, at least thirteen counties  
8 submitted Rate Change Requests seeking to reduce IHSS provider  
9 wages. Although CDSS claims that the process to approve a Rate  
10 Change Request could take up to sixty days, CDSS approved these  
11 requests expeditiously. In at least two instances, CDSS approved  
12 Rate Change Requests in one week.

13       The Court issued its injunction in this case on June 26. On  
14 June 30, 2009, State Defendants sent an All-County Notice. The  
15 notice stated,

16       This All County Information Notice notifies counties of the  
17 recent court order in the case of Martinez v. Schwarzenegger.

18       On February 20, 2009, Senate Bill X3 6 (Chapter 13, Statutes  
19 of 2009) was enacted, which amended Welfare and Institutions  
20 Code section 123-6.1 to reduce the maximum state participation  
21 in negotiated In-Home Supportive Services individual provider  
22 wages and benefits from \$12.10 per hour to \$10.10 per hour.  
23 This reduction was to take effect on July 1, 2009. On June  
26, 2009, the federal district court for the Northern District  
of California issued an injunction prohibiting the department  
and other state agency defendants from implementing the above  
reduction in maximum state participation. The maximum state  
participation in wages and benefits will remain at \$12.10 per  
hour as long as the injunction remains in effect.

24       Leyton Supp. Decl., Ex. G. The notice provides no information  
25 regarding how counties that had submitted rate change requests in  
26 response to § 12306.1(d)(6) could ensure that the pre-July 1, 2009  
27 rates would remain in effect in light of the Court's injunction.

28       On July 3, 2009, CDSS issued an errata to all counties "to

1 provide additional clarification regarding" the effect of the  
2 Court's injunction on the rate change process. The notice stated,

3 The Rate Change Requests that were submitted by Public  
4 Authorities and approved by the California Department of  
5 Social Services (CDSS) and the Department of Health Care  
6 Services (DHCS) remain in effect until counties submit new  
Rate Change Requests through the process outlined in Welfare  
and Institutions Code Section 12306.1 and CDSS and DHCS  
approve those requests.

7 Id., Ex. T.

8 Since the Court's injunction, nine of the thirteen counties that  
9 reduced their wages and benefits after § 12306.1(d)(6) was enacted  
10 have submitted Rate Change Requests to return to the pre-  
11 § 12306.1(d)(6) level.<sup>2</sup>

12 In response to the requests, State Defendants have informed  
13 the counties that the requests can take up to sixty days to  
14 process. Carrol Decl. at ¶ 7; see also, Mancini Decl. at ¶ 8;  
15 McDevitt Supp. Decl., Ex. I; Malberg Supp. Decl. at ¶ 4; Leyton  
16 Supp. Decl., Ex. L. In some communications, State Defendants have  
17 asserted that they will work as "expeditiously" as possible on  
18 processing the requests, Carrol Decl. At ¶ 7, and in other  
19 communications they have stated that they will process them  
20 according to "normal" procedures. Leyton Decl. ¶ 13. State  
21 Defendants dispute Plaintiffs' assertion that the injunction  
22 requires them to ensure that the pre-§ 12306.1(d)(6) rates remain  
23 in effect for the duration of the preliminary injunction.

#### 24 DISCUSSION

25 The Court may issue a contempt order if Defendants "(1) []  
26 violated the court order, (2) beyond substantial compliance,

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28 <sup>2</sup>Those nine counties are Alameda, Contra Costa, Mendocino,  
Napa, Placer, San Mateo, Santa Barbara, Solano and Yolo.

1 (3) not based on a good faith and reasonable interpretation of the  
2 order, and (4) by clear and convincing evidence." In re Dual-Deck  
3 Video Cassette Recorder Antitrust Litig., 10 F.3d 693, 695 (9th  
4 Cir. 1993). The moving party must demonstrate by clear and  
5 convincing evidence that the alleged "contemnors violated a  
6 specific and definite order of the court." Stone v. City and  
7 County of San Francisco, 968 F.2d 850, 856 (9th Cir. 1992). The  
8 contempt "need not be willful, and there is no good faith exception  
9 to the requirement of obedience to a court order." In re Dual  
10 Deck, 10 F.3d at 695.

11 While the Court does not find State Defendants in contempt of  
12 the Court's preliminary injunction order, their manner of  
13 compliance has not carried out the intent of the order.  
14 Apparently, the Court's order was not sufficiently specific. The  
15 Court scheduled the hearing on the preliminary injunction for June  
16 25 so that before July 1 all those concerned -- the State, the  
17 counties, the providers and the elderly and disabled consumers --  
18 would know what rate would be applied to hours worked on or after  
19 July 1. At the hearing, the Court issued its order from the bench,  
20 with a written order following on June 26, so that all those  
21 concerned would know that, as of July 1, the rate could not be  
22 reduced based on § 12306.1(d)(6). The Court declined to be more  
23 specific in ordering the State exactly how to achieve this result,  
24 not because the Court did not intend that the result obtain, but  
25 only in deference to the State's presumed ability to determine how  
26 best to accomplish the result without unintended consequences. The  
27 Court's approach was apparently ineffective. Accordingly, the  
28 Court now clarifies that the State Defendants shall, by the close

1 of business on July 14, 2009,<sup>3</sup> rescind the State's approval of all  
2 county rate reduction requests which were submitted after February  
3 20, 2009, to be effective July 1, 2009, and reinstate the State's  
4 approval of the pre-July 1 rates. The State shall notify each  
5 affected county of these action, using a method designed to ensure  
6 that the notification is received on July 14. At the same time,  
7 the State will notify these counties that it will pay sixty-five  
8 percent of the non-federal share of the pre-July 1, 2009 rate up to  
9 \$12.10 for hours worked on July 1 and thereafter, until such time  
10 as the Court's preliminary injunction is rescinded. The State  
11 shall include a copy of the Court's amended injunction in its  
12 communication to the counties. The State may notify the counties  
13 that they may submit new Rate Change Requests if they wish to  
14 pursue a rate change for reasons other than the passage of  
15 § 12306.1(d)(6).<sup>4</sup>

16 IT IS SO ORDERED.

17 Dated: 07/13/09



18 CLAUDIA WILKEN  
19 United States District Judge  
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23 <sup>3</sup>Immediate action is required because the pay period ends on  
24 July 15.

25 <sup>4</sup>It is not clear from the papers submitted by the parties  
26 whether Fresno County submitted one Rate Change Request with a  
27 second reason for the request other than the passage of  
28 § 12306.1(d)(6) or if it submitted two requests. If it submitted  
only one request, it must submit a separate request based on a  
reason other than § 12306.1(d)(6) if it wishes to pursue a rate  
reduction.